

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 837
96TH GENERAL ASSEMBLY

Reported from the Committee on Commerce, Consumer Protection, Energy and the Environment, March 29, 2012, with recommendation that the Senate Committee Substitute do pass.

6000S.02C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal section 407.400, RSMo, and to enact in lieu thereof one new section relating to franchises.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 407.400, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 407.400, to read as follows:

407.400. As used in sections 407.400 to 407.420:

(1) "Franchise" means a written or oral arrangement for a definite or indefinite period, in which a person grants to another person a license to use a trade name, trademark, service mark, or related characteristic, and in which there is a community of interest in the marketing of goods or services at wholesale, retail, by lease, agreement, or otherwise[, including]; **"franchise" specifically includes**, but is not limited to, a commercial relationship of definite duration or continuing indefinite duration, between a "wholesaler", such wholesaler being a person as defined in this section, licensed pursuant to the provisions of chapter 311 to sell at wholesale, intoxicating liquor, as defined in section 311.020, to retailers, duly licensed in this state, and a "supplier", being a person engaged in the business as a manufacturer, distiller, rectifier or out-of-state solicitor whose brands of intoxicating liquor are distributed through duly licensed wholesalers in this state, and wherein a wholesaler is granted the right to offer, sell, and distribute within this state or any designated area thereof such of the supplier's brands of intoxicating liquor, or all of them, as may be specified, **with or without the grant of a license to use a trade name, trademark, service mark, or related characteristic, and whether or not**

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 **there is a community of interest in the marketing of goods or services;**
20 **except that, the term "franchise" shall not apply to persons engaged in sales from**
21 **warehouses or like places of storage, other than wholesalers as above described,**
22 **leased departments of retail stores, places of original manufacture, nor shall the**
23 **term "franchise" apply to a commercial relationship that does not contemplate the**
24 **establishment or maintenance of a place of business within the state of Missouri.**
25 **As used herein "place of business" means a fixed, geographical location at which**
26 **goods, products or services are displayed or demonstrated for sale. It is the**
27 **general assembly's intent that this subdivision be interpreted as set**
28 **forth in the Missouri cases of High Life Sales Company v. Brown-**
29 **Forman Corporation, 823 S.W.2d 493 (Mo. 1992) and Brown-Forman**
30 **Distillers Corp. v. McHenry, 566 S.W.2d 194 (Mo. 1978), rather than in**
31 **Missouri Beverage Company, Inc. v. Shelton Brothers, Inc., 796 F. Supp.**
32 **2d 988 (W.D. Mo. 2011), aff'd, 11-2456 (8th Cir. February 28,**
33 **2012). Further, the general assembly declares that the federal court's**
34 **interpretation of this subdivision set forth in Missouri Beverage**
35 **Company, Inc. v. Shelton Brothers, Inc., 796 F. Supp. 2d 988 (W.D. Mo.**
36 **2011), aff'd, 11-2456 (8th Cir. February 28, 2012) should be abrogated in**
37 **favor of the preceding cases;**

38 (2) The term "goods" includes any personal property, real property, or any
39 combination thereof;

40 (3) The term "other property" includes a franchise, license distributorship,
41 or other similar right, privilege, or interest;

42 (4) The term "person" includes an individual, corporation, trust, estate,
43 partnership, unincorporated association, or any other legal or commercial entity;

44 (5) The term "pyramid sales scheme" includes any plan or operation for
45 the sale or distribution of goods, services or other property wherein a person for
46 a consideration acquires the opportunity to receive a pecuniary benefit, which is
47 not primarily contingent on the volume or quantity of goods, services, or other
48 property sold or distributed or to be sold or distributed to persons for purposes
49 of resale to consumers, and is based upon the inducement of additional persons,
50 by himself or herself or others, regardless of number, to participate in the same
51 plan or operation; and

52 (6) The term "sale or distribution" includes the acts of leasing, renting or
53 consigning.